

1 **PROFESSIONAL COMPETENCY STANDARDS AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Jennifer Dailey-Provost**

5 Senate Sponsor: Daniel Hemmert

6 **LONG TITLE**

7 **General Description:**

8 This bill amends certain restrictions on age-based physician testing.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▸ amends a restriction on certain age-based testing for physician licensing,
12 employment, privileges, or reimbursement.

13 **Money Appropriated in this Bill:**

14 None

15 **Other Special Clauses:**

16 None

17 **Utah Code Sections Affected:**

18 AMENDS:

19 **26-21-31**, as enacted by Laws of Utah 2018, Chapter 438

20 **31A-45-305**, as enacted by Laws of Utah 2018, Chapter 438

21 **58-67-302**, as last amended by Laws of Utah 2018, Chapters 318 and 438

22 **58-67-302.5**, as last amended by Laws of Utah 2018, Chapters 318 and 438

23 **58-68-302**, as last amended by Laws of Utah 2018, Chapters 318 and 438

24 *Be it enacted by the Legislature of the state of Utah:*

25 Section 1. Section **26-21-31** is amended to read:

26 **26-21-31. Prohibition on certain age-based physician testing.**

27 A health care facility may not require for purposes of employment, privileges, or

30 reimbursement, that a physician, as defined in Section [58-67-102](#), take a cognitive test when
31 the physician reaches a specified age, unless the test reflects [nationally recognized] the
32 standards [~~adopted by the American Medical Association for testing whether an older physician~~
33 ~~remains able to provide safe and effective care for patients~~] described in Subsections
34 [58-67-302\(5\)\(b\)\(i\)](#) through (x).

35 Section 2. Section **31A-45-305** is amended to read:

36 **31A-45-305. Prohibition on certain age-based physician testing.**

37 A managed care organization or other third party may not require for purposes of
38 reimbursement that a physician, as defined in Section [58-67-102](#), take a cognitive test when the
39 physician reaches a specified age, unless the test reflects [nationally recognized] the standards
40 [~~adopted by the American Medical Association for testing whether an older physician remains~~
41 ~~able to provide safe and effective care for patients~~] described in Subsections [58-67-302\(5\)\(b\)\(i\)](#)
42 through (x).

43 Section 3. Section **58-67-302** is amended to read:

44 **58-67-302. Qualifications for licensure.**

45 (1) An applicant for licensure as a physician and surgeon, except as set forth in
46 Subsection (2), shall:

47 (a) submit an application in a form prescribed by the division, which may include:

48 (i) submissions by the applicant of information maintained by practitioner data banks,
49 as designated by division rule, with respect to the applicant;

50 (ii) a record of professional liability claims made against the applicant and settlements
51 paid by or on behalf of the applicant; and

52 (iii) authorization to use a record coordination and verification service approved by the
53 division in collaboration with the board;

54 (b) pay a fee determined by the department under Section [63J-1-504](#);

55 (c) be of good moral character;

56 (d) if the applicant is applying to participate in the Interstate Medical Licensure

57 Compact under Chapter 67b, Interstate Medical Licensure Compact, consent to a criminal

- 58 background check in accordance with Section 58-67-302.1 and any requirements established by
59 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 60 (e) provide satisfactory documentation of having successfully completed a program of
61 professional education preparing an individual as a physician and surgeon, as evidenced by:
62 (i) having received an earned degree of doctor of medicine from an LCME accredited
63 medical school or college; or
64 (ii) if the applicant graduated from a medical school or college located outside the
65 United States or its territories, submitting a current certification by the Educational
66 Commission for Foreign Medical Graduates or any successor organization approved by the
67 division in collaboration with the board;
- 68 (f) satisfy the division and board that the applicant:
69 (i) has successfully completed 24 months of progressive resident training in a program
70 approved by the ACGME, the Royal College of Physicians and Surgeons, the College of
71 Family Physicians of Canada, or any similar body in the United States or Canada approved by
72 the division in collaboration with the board; or
73 (ii) (A) has successfully completed 12 months of resident training in an ACGME
74 approved program after receiving a degree of doctor of medicine as required under Subsection
75 (1)(e);
76 (B) has been accepted in and is successfully participating in progressive resident
77 training in an ACGME approved program within Utah, in the applicant's second or third year
78 of postgraduate training; and
79 (C) has agreed to surrender to the division the applicant's license as a physician and
80 surgeon without any proceedings under Title 63G, Chapter 4, Administrative Procedures Act,
81 and has agreed the applicant's license as a physician and surgeon will be automatically revoked
82 by the division if the applicant fails to continue in good standing in an ACGME approved
83 progressive resident training program within the state;
84 (g) pass the licensing examination sequence required by division rule made in
85 collaboration with the board;

86 (h) be able to read, write, speak, understand, and be understood in the English language
87 and demonstrate proficiency to the satisfaction of the board if requested by the board;

88 (i) meet with the board and representatives of the division, if requested, for the purpose
89 of evaluating the applicant's qualifications for licensure;

90 (j) designate:

91 (i) a contact person for access to medical records in accordance with the federal Health
92 Insurance Portability and Accountability Act; and

93 (ii) an alternate contact person for access to medical records, in the event the original
94 contact person is unable or unwilling to serve as the contact person for access to medical
95 records; and

96 (k) establish a method for notifying patients of the identity and location of the contact
97 person and alternate contact person, if the applicant will practice in a location with no other
98 persons licensed under this chapter.

99 (2) An applicant for licensure as a physician and surgeon by endorsement who is
100 currently licensed to practice medicine in any state other than Utah, a district or territory of the
101 United States, or Canada shall:

102 (a) be currently licensed with a full unrestricted license in good standing in any state,
103 district, or territory of the United States, or Canada;

104 (b) have been actively engaged in the legal practice of medicine in any state, district, or
105 territory of the United States, or Canada for not less than 6,000 hours during the five years
106 immediately preceding the date of application for licensure in Utah;

107 (c) comply with the requirements for licensure under Subsections (1)(a) through (e),
108 (1)(f)(i), and (1)(h) through (k);

109 (d) have passed the licensing examination sequence required in Subsection (1)(f) or
110 another medical licensing examination sequence in another state, district or territory of the
111 United States, or Canada that the division in collaboration with the board by rulemaking
112 determines is equivalent to its own required examination;

113 (e) not have any investigation or action pending against any health care license of the

114 applicant, not have a health care license that was suspended or revoked in any state, district or
115 territory of the United States, or Canada, and not have surrendered a health care license in lieu
116 of a disciplinary action, unless:

117 (i) the license was subsequently reinstated as a full unrestricted license in good
118 standing; or

119 (ii) the division in collaboration with the board determines to its satisfaction, after full
120 disclosure by the applicant, that:

121 (A) the conduct has been corrected, monitored, and resolved; or

122 (B) a mitigating circumstance exists that prevents its resolution, and the division in
123 collaboration with the board is satisfied that, but for the mitigating circumstance, the license
124 would be reinstated;

125 (f) submit to a records review, a practice history review, and comprehensive
126 assessments, if requested by the division in collaboration with the board; and

127 (g) produce satisfactory evidence that the applicant meets the requirements of this
128 Subsection (2) to the satisfaction of the division in collaboration with the board.

129 (3) An applicant for licensure by endorsement may engage in the practice of medicine
130 under a temporary license while the applicant's application for licensure is being processed by
131 the division, provided:

132 (a) the applicant submits a complete application required for temporary licensure to the
133 division;

134 (b) the applicant submits a written document to the division from:

135 (i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility
136 Licensing and Inspection Act, stating that the applicant is practicing under the:

137 (A) invitation of the health care facility; and

138 (B) the general supervision of a physician practicing at the facility; or

139 (ii) two individuals licensed under this chapter, whose license is in good standing and
140 who practice in the same clinical location, both stating that:

141 (A) the applicant is practicing under the invitation and general supervision of the

142 individual; and

143 (B) the applicant will practice at the same clinical location as the individual;

144 (c) the applicant submits a signed certification to the division that the applicant meets

145 the requirements of Subsection (2);

146 (d) the applicant does not engage in the practice of medicine until the division has

147 issued a temporary license;

148 (e) the temporary license is only issued for and may not be extended or renewed

149 beyond the duration of one year from issuance; and

150 (f) the temporary license expires immediately and prior to the expiration of one year

151 from issuance, upon notification from the division that the applicant's application for licensure

152 by endorsement is denied.

153 (4) The division shall issue a temporary license under Subsection (3) within 15

154 business days after the applicant satisfies the requirements of Subsection (3).

155 (5) The division may not require the following requirements for licensure:

156 (a) a post-residency board certification; or

157 (b) a cognitive test when the physician reaches a specified age, unless[~~the test reflects~~

158 ~~nationally recognized standards adopted by the American Medical Association for testing~~

159 ~~whether an older physician remains able to provide safe and effective care for patients.~~]:

160 (i) the screening is based on evidence of cognitive changes associated with aging that

161 are relevant to physician performance;

162 (ii) the screening is based on principles of medical ethics;

163 (iii) physicians are involved in the development of standards for assessing competency;

164 (iv) guidelines, procedures, and methods of assessment, which may include cognitive

165 screening, are relevant to physician practice and to the physician's ability to perform the tasks

166 specifically required in the physician's practice environment;

167 (v) the primary driver for establishing assessment results is the ethical obligation of the

168 profession to the health of the public and patient safety;

169 (vi) the goal of the assessment is to optimize physician competency and performance

170 through education, remediation, and modifications to a physician's practice environment or
171 scope;

172 (vii) a credentialing committee determines that public health or patient safety is
173 directly threatened, the screening permits a physician to retain the right to modify the
174 physician's practice environment to allow the physician to continue to provide safe and
175 effective care;

176 (viii) guidelines, procedures, and methods of assessment are transparent to physicians
177 and physicians' representatives, if requested by a physician or a physician's representative, and
178 physicians are made aware of the specific methods used, performance expectations and
179 standards against which performance will be judged, and the possible outcomes of the
180 screening or assessment;

181 (ix) education or remediation practices that result from screening or assessment
182 procedures are:

183 (A) supportive of physician wellness;

184 (B) ongoing; and

185 (C) proactive; and

186 (x) procedures and screening mechanisms that are distinctly different from for cause
187 assessments do not result in undue cost or burden to senior physicians providing patient care.

188 Section 4. Section **58-67-302.5** is amended to read:

189 **58-67-302.5. Licensing of graduates of foreign medical schools.**

190 (1) Notwithstanding any other provision of law to the contrary, an individual enrolled
191 in a medical school outside the United States, its territories, the District of Columbia, or
192 Canada is eligible for licensure as a physician and surgeon in this state if the individual has
193 satisfied the following requirements:

194 (a) meets all the requirements of Subsection **58-67-302(1)**, except for Subsection
195 **58-67-302(1)(e);**

196 (b) has studied medicine in a medical school located outside the United States which is
197 recognized by an organization approved by the division;

- 198 (c) has completed all of the formal requirements of the foreign medical school except
199 internship or social service;
- 200 (d) has attained a passing score on the educational commission for foreign medical
201 graduates examination or other qualifying examinations such as the United States Medical
202 Licensing Exam parts I and II, which are approved by the division or a medical school
203 approved by the division;
- 204 (e) has satisfactorily completed one calendar year of supervised clinical training under
205 the direction of a United States medical education setting accredited by the liaison committee
206 for graduate medical education and approved by the division;
- 207 (f) has completed the postgraduate hospital training required by Subsection
208 58-67-302(1)(f)(i); and
- 209 (g) has passed the examination required by the division of all applicants for licensure.
- 210 (2) Satisfaction of the requirements of Subsection (1) is in lieu of:
- 211 (a) the completion of any foreign internship or social service requirements; and
- 212 (b) the certification required by Subsection 58-67-302(1)(e).
- 213 (3) Individuals who satisfy the requirements of Subsections (1)(a) through (g) shall be
214 eligible for admission to graduate medical education programs within the state, including
215 internships and residencies, which are accredited by the liaison committee for graduate medical
216 education.
- 217 (4) A document issued by a medical school located outside the United States shall be
218 considered the equivalent of a degree of doctor of medicine for the purpose of licensure as a
219 physician and surgeon in this state if:
- 220 (a) the foreign medical school is recognized by an organization approved by the
221 division;
- 222 (b) the document granted by the foreign medical school is issued after the completion
223 of all formal requirements of the medical school except internship or social service; and
- 224 (c) the foreign medical school certifies that the person to whom the document was
225 issued has satisfactorily completed the requirements of Subsection (1)(c).

226 (5) The division may not require as a requirement for licensure a cognitive test when
227 the physician reaches a specified age, unless the test reflects [nationally recognized] the
228 standards [~~adopted by the American Medical Association for testing whether an older physician~~
229 ~~remains able to provide safe and effective care for patients~~] described in Subsections
230 58-67-302(5)(b)(i) through (x).

231 (6) The provisions for licensure under this section shall be known as the "fifth pathway
232 program."

233 Section 5. Section **58-68-302** is amended to read:

234 **58-68-302. Qualifications for licensure.**

235 (1) An applicant for licensure as an osteopathic physician and surgeon, except as set
236 forth in Subsection (2), shall:

237 (a) submit an application in a form prescribed by the division, which may include:
238 (i) submissions by the applicant of information maintained by practitioner data banks,
239 as designated by division rule, with respect to the applicant;
240 (ii) a record of professional liability claims made against the applicant and settlements
241 paid by or on behalf of the applicant; and
242 (iii) authorization to use a record coordination and verification service approved by the
243 division in collaboration with the board;

244 (b) pay a fee determined by the department under Section **63J-1-504**;

245 (c) be of good moral character;

246 (d) if the applicant is applying to participate in the Interstate Medical Licensure
247 Compact under Chapter 67b, Interstate Medical Licensure Compact, consent to a criminal
248 background check in accordance with Section **58-68-302.1** and any requirements established by
249 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

250 (e) provide satisfactory documentation of having successfully completed a program of
251 professional education preparing an individual as an osteopathic physician and surgeon, as
252 evidenced by:

253 (i) having received an earned degree of doctor of osteopathic medicine from an AOA

- 254 approved medical school or college; or
- 255 (ii) submitting a current certification by the Educational Commission for Foreign
- 256 Medical Graduates or any successor organization approved by the division in collaboration
- 257 with the board, if the applicant is graduated from an osteopathic medical school or college
- 258 located outside of the United States or its territories which at the time of the applicant's
- 259 graduation, met criteria for accreditation by the AOA;
- 260 (f) satisfy the division and board that the applicant:
- 261 (i) has successfully completed 24 months of progressive resident training in an
- 262 ACGME or AOA approved program after receiving a degree of doctor of osteopathic medicine
- 263 required under Subsection (1)(e); or
- 264 (ii) (A) has successfully completed 12 months of resident training in an ACGME or
- 265 AOA approved program after receiving a degree of doctor of osteopathic medicine as required
- 266 under Subsection (1)(e);
- 267 (B) has been accepted in and is successfully participating in progressive resident
- 268 training in an ACGME or AOA approved program within Utah, in the applicant's second or
- 269 third year of postgraduate training; and
- 270 (C) has agreed to surrender to the division the applicant's license as an osteopathic
- 271 physician and surgeon without any proceedings under Title 63G, Chapter 4, Administrative
- 272 Procedures Act, and has agreed the applicant's license as an osteopathic physician and surgeon
- 273 will be automatically revoked by the division if the applicant fails to continue in good standing
- 274 in an ACGME or AOA approved progressive resident training program within the state;
- 275 (g) pass the licensing examination sequence required by division rule, as made in
- 276 collaboration with the board;
- 277 (h) be able to read, write, speak, understand, and be understood in the English language
- 278 and demonstrate proficiency to the satisfaction of the board, if requested by the board;
- 279 (i) meet with the board and representatives of the division, if requested for the purpose
- 280 of evaluating the applicant's qualifications for licensure;
- 281 (j) designate:

282 (i) a contact person for access to medical records in accordance with the federal Health
283 Insurance Portability and Accountability Act; and

284 (ii) an alternate contact person for access to medical records, in the event the original
285 contact person is unable or unwilling to serve as the contact person for access to medical
286 records; and

287 (k) establish a method for notifying patients of the identity and location of the contact
288 person and alternate contact person, if the applicant will practice in a location with no other
289 persons licensed under this chapter.

290 (2) An applicant for licensure as an osteopathic physician and surgeon by endorsement
291 who is currently licensed to practice osteopathic medicine in any state other than Utah, a
292 district or territory of the United States, or Canada shall:

293 (a) be currently licensed with a full unrestricted license in good standing in any state,
294 district or territory of the United States, or Canada;

295 (b) have been actively engaged in the legal practice of osteopathic medicine in any
296 state, district or territory of the United States, or Canada for not less than 6,000 hours during
297 the five years immediately preceding the day on which the applicant applied for licensure in
298 Utah;

299 (c) comply with the requirements for licensure under Subsections (1)(a) through (e),
300 (1)(f)(i), and (1)(h) through (k);

301 (d) have passed the licensing examination sequence required in Subsection (1)(g) or
302 another medical licensing examination sequence in another state, district or territory of the
303 United States, or Canada that the division in collaboration with the board by rulemaking
304 determines is equivalent to its own required examination;

305 (e) not have any investigation or action pending against any health care license of the
306 applicant, not have a health care license that was suspended or revoked in any state, district or
307 territory of the United States, or Canada, and not have surrendered a health care license in lieu
308 of a disciplinary action, unless:

309 (i) the license was subsequently reinstated as a full unrestricted license in good

310 standing; or

311 (ii) the division in collaboration with the board determines, after full disclosure by the
312 applicant, that:

313 (A) the conduct has been corrected, monitored, and resolved; or

314 (B) a mitigating circumstance exists that prevents its resolution, and the division in
315 collaboration with the board is satisfied that, but for the mitigating circumstance, the license
316 would be reinstated;

317 (f) submit to a records review, a practice review history, and physical and

318 psychological assessments, if requested by the division in collaboration with the board; and

319 (g) produce evidence that the applicant meets the requirements of this Subsection (2) to
320 the satisfaction of the division in collaboration with the board.

321 (3) An applicant for licensure by endorsement may engage in the practice of medicine
322 under a temporary license while the applicant's application for licensure is being processed by
323 the division, provided:

324 (a) the applicant submits a complete application required for temporary licensure to the
325 division;

326 (b) the applicant submits a written document to the division from:

327 (i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility
328 Licensing and Inspection Act, stating that the applicant is practicing under the:

329 (A) invitation of the health care facility; and

330 (B) the general supervision of a physician practicing at the health care facility; or

331 (ii) two individuals licensed under this chapter, whose license is in good standing and
332 who practice in the same clinical location, both stating that:

333 (A) the applicant is practicing under the invitation and general supervision of the
334 individual; and

335 (B) the applicant will practice at the same clinical location as the individual;

336 (c) the applicant submits a signed certification to the division that the applicant meets
337 the requirements of Subsection (2);

- 338 (d) the applicant does not engage in the practice of medicine until the division has
339 issued a temporary license;
- 340 (e) the temporary license is only issued for and may not be extended or renewed
341 beyond the duration of one year from issuance; and
- 342 (f) the temporary license expires immediately and prior to the expiration of one year
343 from issuance, upon notification from the division that the applicant's application for licensure
344 by endorsement is denied.
- 345 (4) The division shall issue a temporary license under Subsection (3) within 15
346 business days after the applicant satisfies the requirements of Subsection (3).
- 347 (5) The division may not require [the following as a requirement for licensure: (a)] a
348 post-residency board certification[, or].
- 349 (b) a cognitive test when the physician reaches a specified age, unless the test reflects
350 [nationally recognized] the standards [adopted by the American Medical Association for testing
351 whether an older physician remains able to provide safe and effective care for patients]
352 described in Subsections 58-67-302(5)(b)(i) through (x).